

## **REMARKS**

### **I. Introduction**

Claims 1, 4, 8, 10 and 13 are pending and rejected.

Applicants thank the Examiner and Supervisory Examiner for the opportunity to meet and discuss the pending claims.

Applicants respectfully request reconsideration of the rejection.

### **II. 35 USC § 103 rejections**

A. Claims 1, 4, and 10 are rejected under 35 USC 103(a) as being unpatentable over Duffett (WO 98/13133) in view of Itagaki et al. (EP 0564787).

Applicants believe the proper inquiry to be whether based on the teachings of Duffett and Itagaki et al., would one of skill in the art be motivated to produce a composition which consists essentially of at least 99 weight % cocoa butter, deodorized to an extent of 90-95%, and is in the form of a powder. Applicants believe no, as neither references teach or suggest all of the limitations of the claims. Moreover, one of skill in the art would not seek to combine the teachings of Duffett and Itagaki to practice the claimed invention.

Taking Duffett as the primary reference, Duffett discloses cocoa butter or cocoa mass is obtained in liquid form, atomized, and the atomized liquid is rapidly cooled to form a powder. Duffett does not disclose the cocoa butter is at least 99% weight cocoa butter, or specify the use of compositions which are at least 99% weight cocoa butter. Duffett discloses the powdered cocoa butter is used during the chocolate making process as part of the crumb making process or at the conching/tempering stage of chocolate production (pages 12 – 13) and provides no other use for powdered cocoa butter. One of ordinary skill in the art, relying on the disclosure of Itagaki et al. would not seek to deodorize the powdered cocoa butter of Duffett because it simply does not make sense to eliminate the i.e., chocolate odor when producing chocolate.

If Itagaki is taken as the primary reference, Itagaki discloses cocoa butter may be deodorized. However, Itagaki does not teach to what degree the cocoa butter is deodorized, and

does not disclose cocoa butter is specifically deodorized to an extent of 90-95% . Itagaki merely discloses cocoa butter may be deodorized without specifying the degree.

Itagaki continues to disclose confectionary fat compositions comprising from 20 to 80% by weight of a deodorized cocoa butter and from 20 to 80% by weight of hardened fats. Such compositions are suitable for sandwiching or filling in biscuits, cakes and bread, which is excellent in flavor, melting properties, texture, shape retention at ordinary temperature and whipping properties, has a sharp meltability in the mouth. Itagaki emphasizes the unsuitability of cocoa butter alone for these purposes, and thus, one of skill in the art would not be motivated to produce a cocoa butter composition consisting of at least 99% by weight cocoa butter, as such compositions are clearly unsuitable for use.

The Examiner finds one of ordinary skill would be motivated to modify Duffett at least for the purpose of removing the undesirable cocoa butter flavor and making the fat based powdered product more versatile and usable in foods with other flavors as taught by Itagaki. However, as previously discussed, Duffett only discloses the use of powder cocoa butter during the chocolate making process as part of the crumb making process or at the conching/tempering stage of chocolate production (pages 12 – 13) and provides no other use for the powdered cocoa butter. Additionally, one of skill in the art would not seek to use Duffett's powder cocoa butter in Itagaki because, again, Itagaki seeks to eliminate the formation of fat crystals. Itagaki gets around this problem by incorporating 20 to 80% by weight of hardened fats with deodorized cocoa butter. Thus, even if the powdered cocoa butter was used in the composition of Itagaki, such a composition would not consist of at least 99 weight % cocoa butter, but would necessarily include 20 to 80% weight hardened fat.

Itagaki discloses cocoa butter needs to be tempered, but fat compositions which are tempered can be hardly whipped because of the fat crystal content. Page 2, lines 11 – 19. The Examiner believes the Applicant is arguing Itagaki fails to show certain features of the invention. However, Applicants are bringing this section to the Examiner's attention in order to illustrate why one of skill in the art would not seek to combine the teachings of Duffett and Itagaki. Itagaki produces fat compositions without tempering to avoid the formation of crystals, i.e., by adding a hardened fat to cocoa butter. Duffett discloses producing fat crystals. Page 1, lines 14

- 17. One of skill in the art would not seek to combine the teachings of Duffett and Itagaki because Itagaki seeks to avoid forming fat crystals, while the objective of Duffett is to produce fat crystals.

Claims 4 and 10 all depend from claim 1. As neither Duffett or Itagaki et al. teach or suggest all of the limitations of claim 1, it is submitted the rejection of claims 4 and 10 are improper, and Applicants request the rejection be withdrawn.

B. Claims 8 and 13 are rejected under 35 USC 103(a) as being unpatentable over Duffett (WO 98/13133) in view of Itagaki et al. (EP 0564787), and further in view of Kawabata et al. (US 5,460,847)

Applicants respectfully request the rejection be withdrawn, as claims 8 and 13 depend from claim 1. As previously discussed, Duffett and Itagaki et al. fail to teach or suggest all of the limitations of claim 1, and Kawabata fails to cure such defects. Applicants request the rejection be withdrawn.

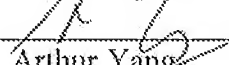
#### V. Summary

Applicants have made a *bona fide* attempt to address all matters raised by the Examiner. Applicants respectfully submit that the application is now in condition for allowance, and therefore respectfully request that the outstanding rejections be withdrawn and that a Notice of Allowance be issued. If any remaining matters need to be resolved, Applicants respectfully request an interview with the Examiner prior to any official action being taken by the Office in response to these arguments and amendments in order to facilitate allowance of the pending claims.

It is believed no fee, other than the Request for Continued Examination and extension of time, is presently required. If a fee is required, please charge the same to Deposit Account 50-4255.

Respectfully submitted,

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